



ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[EPA-R05-OAR-2022-0295; FRL-10162-02-R5]

Air Plan Approval; Michigan; Revisions to Part 1 and 2 Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Direct final rule.

SUMMARY: The Environmental Protection Agency (EPA) is approving revisions to Michigan Air Pollution Control Rules Part 1 Definitions, and Part 2 Air Use Approval for inclusion in the Michigan State Implementation Plan (SIP). Additionally, EPA is removing rules from the SIP that are part of Michigan's title V Renewable Operating Permit program, and rules that have been moved to other sections of the Michigan Administrative Code and approved into the Michigan SIP.

DATES: This direct final rule is effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, unless EPA receives adverse comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If adverse comments are received, EPA will publish a timely withdrawal of the direct final rule in the *Federal Register* informing the public that the rule will not take effect.

ADDRESSES: Submit your comments, identified by Docket ID No. EPA-R05-OAR-2022-0295 at <https://www.regulations.gov> or via email to Damico.genevieve@epa.gov. For comments submitted at Regulations.gov, follow the online instructions for submitting

comments. Once submitted, comments cannot be edited or removed from Regulations.gov. For either manner of submission, EPA may publish any comment received to its public docket. Do not submit electronically any information you consider to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Multimedia submissions (audio, video, etc.) must be accompanied by a written comment. The written comment is considered the official comment and should include discussion of all points you wish to make. EPA will generally not consider comments or comment contents located outside of the primary submission (i.e. on the web, cloud, or other file sharing system). For additional submission methods, please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section. For the full EPA public comment policy, information about CBI or multimedia submissions, and general guidance on making effective comments, please visit <https://www2.epa.gov/dockets/commenting-epa-dockets>.

FOR FURTHER INFORMATION CONTACT: Constantine Blathras, Environmental Engineer, Air Permits Section, Air Programs Branch (AR18J), Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-0671, Blathras.constantine@epa.gov. The EPA Region 5 office is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding Federal holidays and facility closures due to COVID-19.

SUPPLEMENTARY INFORMATION: Throughout this document whenever

"we," "us," or "our" is used, we mean EPA.

I. Background

Section 110(a)(2)(C) of the Clean Air Act (CAA) requires that the SIP include a program to provide for the "regulation of the modification and construction of any stationary source within the areas covered by the plan as necessary to assure that national ambient air quality standards are achieved." This includes a program for permitting construction and modification of both major and minor sources that the state deems necessary to protect air quality. The State of Michigan's minor source permit to install rules are contained in Part 2, Air Use Approval, R. 336.1201 to R. 336.1299 of the Michigan Administrative Code. Changes to the Part 2 rules were submitted on November 12, 1993, May 16, 1996, April 3, 1998, September 2, 2003, March 24, 2009, and February 28, 2017. EPA approved changes to the Part 2 rules most recently in a final approval dated August 31, 2018 (83 FR 44485). The Michigan Administrative Code at Part 1, General Provisions, R. 336.1101 to R. 336.1128, contains the definitions of terms used in the Michigan code.

EPA is approving revisions to Michigan's Part 1. Definitions, and Part 2. Air Use Approval for inclusion in the Michigan SIP. The following Michigan Air Pollution Control Rules are being added or revised: R 336.1101(q), R 336.1103(aa), R 336.1201a, R 336.1202-1203, R 336.1206-1207, R 336.1209, R 336.1214a, R 336.1219(1), R 336.1240-1241, R 336.1278, R

336.1285, and R 336.1291.

The Part 1 definition revisions include new or revised definitions for the following, R 336.1101(q) "Aqueous based parts washer", and R 336.1103(aa) "cold cleaner".

The Part 2 modifications consist of wording changes made to help clarify the air use approval rules, and to update references and terminology. Other changes include new and modified definitions of phrases, new timeframes for processing air use permits, and two new exemptions from the permitting program for small sources.

EPA is removing the Michigan Air Pollution Control Rules R 336.1212 "Administratively complete applications; insignificant activities; streamlining applicable requirements; emissions reporting and fee calculations", R 336.1216 "Modifications to renewable operating permits", R 336.1219(2) "Amendments for change of ownership or operational control", R 336.1220 (rescinded), and R 336.1299 (rescinded) from the Michigan SIP.

The rescinded rules have been moved to other sections in the Michigan Administrative Code where they have already been approved into the Michigan SIP and rescinded from the original Part 2 location. This action completes the transition process for these rescinded rules.

The other Part 2 rules removed from the Michigan SIP by this action do not address the requirements related to attainment and maintenance of the National Ambient Air Quality Standards (NAAQS) under Section 110 of the CAA. EPA has

determined that these rules were erroneously incorporated into the SIP. These rules instead address the requirements under title V of the CAA for operating permit programs. EPA fully approved Michigan's title V Renewable Operating Permit Program on November 10, 2003 (68 FR 63735) to implement its program. Since these rules do not address the requirements related to attainment and maintenance of the NAAQS under Section 110 of the CAA and have been approved as part of the title V program approval, EPA will remove them from this section of the Michigan SIP.

EPA proposed to rescind rule R 336.1220 in a February 6, 2013 (78 FR 8485), action (in addition to approval of revisions to Michigan rules in Parts 1 and 19). EPA did not receive any comments on that proposal and published a final action on December 16, 2013 (78 FR 76064).

As part of the SIP revision request, Michigan submitted a 110(1) demonstration for each of the proposed revisions to the SIP. Section 110(1) of the CAA governs the submittal of SIP revisions as part of Attachment E of its submittal. It states, "Each revision to an implementation plan submitted by a State under this chapter shall be adopted by such State after reasonable notice and public hearing. The Administrator shall not approve a revision of a plan if the revision would interfere with any applicable requirement concerning the attainment and reasonable further progress (as defined by 7501 of this title), or any other applicable requirement of this chapter." The

110(1) demonstration in the SIP revision request adequately addresses this requirement for each rule revision, and the revisions should cause minimal to no impact on the emissions of any source, will have no effect on Michigan's National Ambient Air Quality Standards attainment status, or any backsliding on achieved improvements. The revision for the removed and rescinded rules pertain to the Michigan Title V renewable operating permit program which has already been approved.

II. What Action is EPA Taking?

EPA is approving revisions to Michigan's Part 1 and Part 2 regulations. Specifically, EPA is approving revisions to Michigan Air Pollution Control Rules R 336.1101, R 336.1103, R 336.1201a, R 336.1202, R 336.1203, R 336.1206, R 336.1207, R 336.1209, R 336.1214a, R 336.1219, R 336.1240, R 336.1241, R 336.1278, and R 336.1291, effective December 20, 2016, and R 336.1285, effective January 2, 2019. EPA is also removing Michigan Air Pollution Control Rules R336.1212, R 336.1216, and R 336.1299 from the SIP.

We are publishing this action without prior proposal because we view this as a noncontroversial amendment and anticipate no adverse comments. However, in the proposed rules section of this *Federal Register* publication, we are publishing a separate document that will serve as the proposal to approve the State plan if relevant adverse written comments are filed. This rule will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**, without further notice unless we

receive relevant adverse written comments by **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. If we receive such comments, we will withdraw this action before the effective date by publishing a subsequent document that will withdraw the final action. All public comments received will then be addressed in a subsequent final rule based on the proposed action. EPA will not institute a second comment period. Any parties interested in commenting on this action should do so at this time. Please note that if EPA receives adverse comment on an amendment, paragraph, or section of this rule and if that provision may be severed from the remainder of the rule, EPA may adopt as final those provisions of the rule that are not the subject of an adverse comment. If we do not receive any comments, this action will be effective **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

III. Incorporation by Reference.

In this rule, EPA is finalizing regulatory text that includes incorporation by reference. In accordance with requirements of 1 CFR 51.5, EPA is finalizing the incorporation by reference of the Michigan Regulations described in Section I of this preamble and set forth in the amendments to 40 CFR part 52 below. EPA has made, and will continue to make, these documents generally available through www.regulations.gov and at the EPA Region 5 Office (please contact the person identified in the **FOR FURTHER INFORMATION CONTACT** section of this preamble for more information). Therefore, these materials have been

approved by EPA for inclusion in the SIP, have been incorporated by reference by EPA into that plan, are fully federally enforceable under sections 110 and 113 of the CAA as of the effective date of the final rulemaking of EPA's approval, and will be incorporated by reference in the next update to the SIP compilation.¹

Also in this document, as described in Section I of this preamble and the amendments to 40 CFR part 52 set forth below, EPA is removing provisions of the EPA-Approved Michigan Regulations from the Michigan SIP, which is incorporated by reference in accordance with the requirements of 1 CFR part 51.

IV. Statutory and Executive Order Reviews.

Under the CAA, the Administrator is required to approve a SIP submission that complies with the provisions of the CAA and applicable Federal regulations. 42 U.S.C. 7410(k); 40 CFR 52.02(a). Thus, in reviewing SIP submissions, EPA's role is to approve state choices, provided that they meet the criteria of the CAA. Accordingly, this action merely approves state law as meeting Federal requirements and does not impose additional requirements beyond those imposed by state law. For that reason, this action:

- Is not a significant regulatory action subject to review by the Office of Management and Budget under Executive Orders 12866 (58 FR 51735, October 4, 1993) and 13563 (76 FR 3821, January 21, 2011);

¹ 62 FR 27968 (May 22, 1997).

- Does not impose an information collection burden under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*);
- Is certified as not having a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*);
- Does not contain any unfunded mandate or significantly or uniquely affect small governments, as described in the Unfunded Mandates Reform Act of 1995 (Public Law 104-4);
- Does not have federalism implications as specified in Executive Order 13132 (64 FR 43255, August 10, 1999);
- Is not an economically significant regulatory action based on health or safety risks subject to Executive Order 13045 (62 FR 19885, April 23, 1997);
- Is not a significant regulatory action subject to Executive Order 13211 (66 FR 28355, May 22, 2001);
- Is not subject to requirements of Section 12(d) of the National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) because application of those requirements would be inconsistent with the CAA; and
- Does not provide EPA with the discretionary authority to address, as appropriate, disproportionate human health or environmental effects, using practicable and legally permissible methods, under Executive Order 12898 (59 FR 7629, February 16, 1994).

In addition, the SIP is not approved to apply on any Indian

reservation land or in any other area where EPA or an Indian tribe has demonstrated that a tribe has jurisdiction. In those areas of Indian country, the rule does not have tribal implications and will not impose substantial direct costs on tribal governments or preempt tribal law as specified by Executive Order 13175 (65 FR 67249, November 9, 2000).

This action is subject to the Congressional Review Act, and EPA will submit a rule report to each House of the Congress and to the Comptroller General of the United States. This action is not a "major rule" as defined by 5 U.S.C. 804(2).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by **[INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this action for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. Parties with objections to this direct final rule are encouraged to file a comment in response to the parallel notice of proposed rulemaking for this action published in the proposed rules section of this *Federal Register*, rather than file an immediate petition for judicial review of this direct final rule, so that EPA can withdraw this direct final rule and address the comment in the proposed rulemaking. This action may not be challenged

later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Incorporation by reference, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: September 19, 2022.

Debra Shore,
Regional Administrator, Region 5.

For the reasons stated in the preamble, 40 CFR part 52 is amended as follows:

PART 52—APPROVAL AND PROMULGATION OF IMPLEMENTATION PLANS

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401 *et seq.*

2. In § 52.1170, the table in paragraph (c) is amended:

a. Under “Part 1. General Provisions” by revising the entries for R 336.1101 and R 336.1103; and

b. Under “Part 2. Air Use Approval” by:

i. Revising the entries for R 336.1201a, R 336.1202, R 336.1203, R 336.1206, R 336.1207, and R 336.1209;

ii. Removing the entry for R 336.1212;

iii. Adding the entry for R 336.1214a in numerical order;

iv. Removing the entry for R 336.1216;

v. Revising the entries for R 336.1219, R 336.1240, R 336.1241, R 336.1278, and R 336.1285;

vi. Adding the entry for R 336.1291 in numerical order; and

vii. Removing the entry for R 336.1299.

The revisions and additions read as follows:

§ 52.1170 Identification of plan.

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(c) * * *

EPA-APPROVED MICHIGAN REGULATIONS

Michigan citation	Title	State effective date	EPA approval date	Comments
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Part 1. General Provisions				
R 336.1101	Definitions; A	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	All except for (a) Act and (h) Air pollution.
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R 336.1103	Definitions; C	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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Part 2. Air Use Approval				
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R 336.1201a	General permits to install	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1202	Waivers of approval	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1203	Information required	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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R 336.1206	Processing of applications for permits to install	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1207	Denial of permits to install	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1209	Use of old permits to limit potential to emit	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1214a	Consolidation of permits to install within renewable operating permit	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1219	Amendments for change of ownership or operational control	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	

			REGISTER CITATION]	
R 336.1240	Required air quality models	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1241	Air quality modeling demonstration requirements	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
R 336.1278	Exclusion from exemption	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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R 336.1285	Permit to install exemptions; miscellaneous	1/2/2019	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	
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R 336.1291	Permit to install exemptions; emission units with "de minimis" emissions	12/20/2016	[INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER], [INSERT FEDERAL REGISTER CITATION]	All except for R 336.1291(2) (a) through (d) and non-criteria pollutants listed in Table 23
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[FR Doc. 2022-20621 Filed: 9/26/2022 8:45 am; Publication Date: 9/27/2022]